

House Study Bill 609

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON MASCHER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring the licensing of abstractors within the
2 department of commerce, establishing fees, penalties, and
3 judicial remedies, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5912HC 82
6 jr/rj/5

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1 1 Section 1. NEW SECTION. 545.1 DEFINITIONS.
1 2 As used in this chapter, unless the context otherwise
1 3 requires:
1 4 1. "Board" means the abstractor board of examiners created
1 5 pursuant to this chapter.
1 6 2. "Bureau" means the professional licensing and
1 7 regulation bureau of the banking division of the department of
1 8 commerce.
1 9 Sec. 2. NEW SECTION. 545.2 BOARD OF EXAMINERS.
1 10 1. An abstractor board of examiners is created within the
1 11 bureau. The board shall consist of five members appointed by
1 12 the governor, subject to confirmation by the senate. Three of
1 13 the members appointed shall be licensed under this chapter and
1 14 two shall represent the general public. Members of the board
1 15 shall serve three-year, staggered terms as designated by the
1 16 governor and appointments to the board are subject to the
1 17 requirements of sections 69.16, 69.16A, and 69.19. Vacancies
1 18 shall be filled by the governor for the duration of the
1 19 unexpired term. Members of the board are entitled to receive
1 20 a per diem as specified in section 7E.6 for each day spent in
1 21 performance of duties as members and shall be reimbursed for
1 22 all actual and necessary expenses incurred in the performance
1 23 of duties as members.
1 24 2. The abstractor board of examiners shall administer the
1 25 provisions of this chapter in accordance with rules adopted by
1 26 the board pursuant to chapter 17A.
1 27 Sec. 3. NEW SECTION. 545.3 LICENSURE, EXAMINATION, AND
1 28 FEES == SEAL == NAME == MAINTENANCE OF ABSTRACT TITLE PLANT.
1 29 1. A person, firm, partnership, association, or
1 30 corporation which makes, compiles, or completes and sells
1 31 abstracts of title to real estate or executes real property
1 32 title searches in this state shall obtain an abstractor
1 33 license issued in accordance with this chapter. The annual
1 34 fee for an abstractor license shall be fixed by the board by
1 35 rule. An abstractor who, on July 1, 2009, is a participant in
2 1 the title guaranty program under section 16.91 shall be
2 2 eligible to receive a license without meeting the examination
2 3 requirements set forth in subsection 5. A licensee who
2 4 receives a license by virtue of being a participant under
2 5 section 16.91 is subject to continuing education requirements
2 6 established by the board.
2 7 2. The annual fee shall accompany the application for
2 8 licensure and shall be returned to the applicant if the
2 9 license is not issued, except as provided in subsection 5. A
2 10 license issued under this section expires on December 31 of
2 11 the year for which the license is issued. In the absence of
2 12 any condition or reason which might warrant the refusal of the
2 13 granting of a renewal license, the board shall issue a license
2 14 each year upon receipt of a written request of the applicant
2 15 together with the annual fee established by the board.
2 16 3. The board may issue an inactive license to a licensee
2 17 eligible for such inactive license as determined by the board.

2 18 The fee for an inactive license shall be the same as for an
2 19 active license.

2 20 4. A license shall not be issued to an applicant until the
2 21 applicant files with the board a bond or a policy of
2 22 insurance. Such insurance policy shall be a policy of errors
2 23 and omissions in an amount as determined by the board and
2 24 shall be issued by a company authorized to transact business
2 25 in this state.

2 26 5. a. A person, firm, partnership, association, or
2 27 corporation applying for an initial license under this section
2 28 may obtain the license by complying with the provisions of
2 29 this section and by passing an examination conducted by the
2 30 board. The board shall hold at least two examinations each
2 31 year, to be held at times and places to be fixed by the board.
2 32 The board shall give notice of an examination at least thirty
2 33 days before the time fixed for the commencement of the
2 34 examination by publication in the Iowa administrative
2 35 bulletin. The fee for the examination shall be fixed by the
3 1 board by rule in an amount adequate to cover the cost of the
3 2 examination and shall be paid to the board at the time
3 3 application is made for such examination. In the case of a
3 4 firm, partnership, association, or corporation, the
3 5 examination need only be taken by those persons designated to
3 6 sign abstracts or real property searches on behalf of the
3 7 firm, partnership, association, or corporation. A licensed
3 8 firm, partnership, association, or corporation shall submit in
3 9 writing to the board a list of such designated persons as a
3 10 condition for license renewal, and shall deposit with the
3 11 board the signatures of all persons authorized to sign
3 12 abstracts or real property searches on behalf of the licensee.

3 13 b. If the applicant does not pass the examination, the
3 14 board shall deny the application for a license and retain the
3 15 examination fee.

3 16 6. The board shall establish continuing education
3 17 requirements as a condition for renewal of the license, as
3 18 provided in section 272C.2.

3 19 7. a. A licensee shall own or lease, and maintain and use
3 20 in the preparation of abstracts of title or the execution of
3 21 real property searches, an up-to-date abstract title plant
3 22 including tract indexes for real estate for each county in
3 23 which abstracts are prepared or real property searches are
3 24 executed by the licensee. The tract indexes shall contain a
3 25 reference to all instruments affecting the real estate that
3 26 are recorded in the office of the county recorder, and shall
3 27 contain records for at least the last forty years.

3 28 b. This subsection shall not apply to persons possessing a
3 29 waiver pursuant to section 16.91, subsection 5, on or prior to
3 30 July 1, 2009.

3 31 8. This section does not apply to persons who, without
3 32 compensation, prepare abstracts of title or execute real
3 33 property title searches, for their own personal benefit or for
3 34 the benefit of a member of the person's immediate family, on
3 35 real estate owned by or intending to be purchased by or for
4 1 the person or a member of the person's immediate family.

4 2 9. This section does not apply to employees of banks,
4 3 credit unions, and other financial institutions which are
4 4 abstracting or preparing title searches that are not
4 5 subsequently sold to any other public or private entity and
4 6 that are done for the sole benefit of the institution when
4 7 making a particular junior or subordinate mortgage loan.

4 8 Sec. 4. NEW SECTION. 545.4 UNLAWFUL FOR COUNTY OFFICERS
4 9 TO PREVENT USE OF RECORDS == CIVIL ENFORCEMENT.

4 10 A county officer shall not prevent or prohibit any person
4 11 who has complied with the provisions of this chapter from a
4 12 proper use of the records of the office of the county officer.
4 13 Judicial action to enforce the right of access shall be taken
4 14 pursuant to section 22.10.

4 15 Sec. 5. NEW SECTION. 545.5 SUSPENSION OR REVOCATION OF
4 16 LICENSE == CIVIL PENALTY == NOTICE AND HEARING.

4 17 The board, after notice and hearing conducted in accordance
4 18 with chapter 17A, may suspend or revoke a license, or impose a
4 19 civil penalty of up to one thousand dollars, for a violation
4 20 of any provision of this chapter or the rules adopted pursuant
4 21 to this chapter, or upon the conviction of a licensee for
4 22 malicious destruction of public records, or for fraudulent
4 23 practices.

4 24 Sec. 6. NEW SECTION. 545.6 PROHIBITED ACTIVITIES ==
4 25 CIVIL ENFORCEMENT.

4 26 On and after July 1, 2009, a person shall not make,
4 27 compile, or complete or sell abstracts of title to real estate
4 28 or execute real property title searches in this state unless

4 29 the person is operated or managed on a full-time basis by or
4 30 employs on a full-time basis an individual licensed under this
4 31 chapter. A private party may bring an action against a person
4 32 who violates a provision of this chapter to recover, in
4 33 addition to actual damages, one hundred dollars in statutory
4 34 damages and reasonable attorney fees.

4 35 Sec. 7. Section 272C.1, subsection 6, Code Supplement
5 1 2007, is amended by adding the following new paragraph:

5 2 NEW PARAGRAPH. ae. The abstractor board of examiners,
5 3 created pursuant to chapter 545.

5 4 Sec. 8. Section 272C.3, subsection 2, paragraph a, Code
5 5 Supplement 2007, is amended to read as follows:

5 6 a. Revoke a license, or suspend a license either until
5 7 further order of the board or for a specified period, upon any
5 8 of the grounds specified in section 147.55, 148.6, 148B.7,
5 9 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21,
5 10 543B.29, 544A.13, 544B.15, 545.5, or 602.3203 or chapter 151
5 11 or 155, as applicable, or upon any other grounds specifically
5 12 provided for in this chapter for revocation of the license of
5 13 a licensee subject to the jurisdiction of that board, or upon
5 14 failure of the licensee to comply with a decision of the board
5 15 imposing licensee discipline;

5 16 Sec. 9. Section 272C.4, subsection 6, Code Supplement
5 17 2007, is amended to read as follows:

5 18 6. Define by rule acts or omissions that are grounds for
5 19 revocation or suspension of a license under section 147.55,
5 20 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219,
5 21 542.10, 542B.21, 543B.29, 544A.13, 544B.15, 545.5, or 602.3203
5 22 or chapter 151 or 155, as applicable, and to define by rule
5 23 acts or omissions that constitute negligence, careless acts,
5 24 or omissions within the meaning of section 272C.3, subsection
5 25 2, paragraph "b", which licensees are required to report to
5 26 the board pursuant to section 272C.9, subsection 2;

5 27 Sec. 10. Section 272C.5, subsection 2, paragraph c, Code
5 28 Supplement 2007, is amended to read as follows:

5 29 c. Shall state whether the procedures are an alternative
5 30 to or an addition to the procedures stated in sections 147.58
5 31 through 147.71, 148.6 through 148.9, 152.10, 152.11, 153.33,
5 32 154A.23, 542.11, 542B.22, 543B.35, 543B.36, ~~and~~ 544B.16, and
5 33 545.5.

5 34 Sec. 11. Section 272C.6, subsection 6, unnumbered
5 35 paragraph 1, Code 2007, is amended to read as follows:

6 1 A board created pursuant to chapter 147, 154A, 155, 169,
6 2 542, 542B, 543B, 543D, 544A, ~~or~~ 544B, or 545 may charge a fee
6 3 not to exceed seventy-five dollars for conducting a
6 4 disciplinary hearing pursuant to this chapter which results in
6 5 disciplinary action taken against the licensee by the board,
6 6 and in addition to the fee, may recover from a licensee the
6 7 costs for the following procedures and associated personnel:

6 8 Sec. 12. INITIAL ABTRACTOR BOARD OF EXAMINERS ==
6 9 APPOINTMENTS. The initial members of the abstractor board of
6 10 examiners shall be appointed to the following terms:

6 11 1. Two members shall be appointed for a term of three
6 12 years.

6 13 2. Two members shall be appointed for a term of two years.

6 14 3. One member shall be appointed for a term of one year.

6 15 Sec. 13. EFFECTIVE DATE. This Act takes effect July 1,
6 16 2009.

6 17 EXPLANATION

6 18 This bill is a licensing practice Act creating the
6 19 abstractor board of examiners within the department of
6 20 commerce. The board is authorized to issue a license upon the
6 21 application of an individual, firm, partnership, association,
6 22 or corporation which engages in the business of preparing
6 23 abstracts of title to real property or who conducts real
6 24 property title searches and payment of a license fee. An
6 25 individual who prepares abstracts of title to real property or
6 26 real property title searches is required to pass an
6 27 examination and pay an examination fee. The board is required
6 28 to adopt rules for the administration of the new provisions.
6 29 The abstractor board of examiners has authority to conduct
6 30 examinations of applicants, to establish bond and insurance
6 31 requirements, to establish continuing education requirements,
6 32 and to set fees for the examination and license. Access to
6 33 the records may be compelled by judicial action pursuant to
6 34 Code section 22.10. A private party may bring an action for
6 35 damages for violations of the new provisions.

7 1 The bill takes effect July 1, 2009.

7 2 LSB 5912HC 82

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